HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.4941 of 2006
Date of decision : 29.01.2007

Maman Ram .....Petitioner

versus

Kuldip and other .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Ajit Sihag, Advocate for the petitioner
Mr.Akshay Kumar Goel, Advocate for the respondents.

* * *

ORDER

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition to the order passed by the learned First Appellate Court on 23.2.2005, whereby an application for restoration of the appeal was dismissed in default. The challenge is also to the order dated 12.8.2006, passed by the learned First Appellate Court, whereby an application for restoration of the earlier application was declined.

Against the judgment and decree dated 24.2.1999, the defendant-petitioner filed an appeal before the learned First Appellate Court. The said appeal was dismissed in default on 15.9.1999. An application was filed by the petitioner to seek restoration of the appeal on the ground that he could not appear on the date of hearing on account of illness of his wife as she was admitted in the hospital and the appeal was fixed for summoning of the respondents. His Counsel Mr.Ramesh Kumar Verma, Advocate, in fact instructed his colleague lawyer Mr.B.B.Jain, Advocate to enquire about the status of the case. But due to

bonafide error, the appeal was dismissed for want of prosecution. Petitioner moved an application for restoration of the appeal which was dismissed in default on 23.2.2005. Subsequently, an application for restoration was filed which was dismissed on 12.8.2006.

After hearing learned counsel for the parties, I am of the opinion that the order passed by the learned First Appellate Court in not restoring the appeal to its original number, suffers from patent illegality and irregularity. Though, it can be said that the petitioner was negligent in seeking restoration of the application and also of appeal, but the facts remain that it cannot be stated that he was adopting delaying tactics to delay the decision of the appeal. On 15.9.1999, when the appeal was dismissed in default, it is the case of the petitioner that his wife was ill and his counsel instructed the another lawyer to enquire about the status of the case. The case was fixed for summoning of the respondents before the Court, therefore, the presence of the petitioner was not required. The non appearance is not due to lack of bonafide in any manner. The subsequent order passed by the learned First Appellate Court, in fact, negates the cause of justice. The Court should have permitted the parties to contest the case on merit, rather on technicalities. However, for delay in filing the application, I deem it appropriate to burden the petitioner with costs.

Consequently, the present revision petition is allowed. The orders dated 15.9.1999, 23.2.2005 and 12.8.2006, passed by the learned First Appellate Court, are set aside. The appeal is restored to its original number subject to payment of Rs.2000/- as costs.

The parties through their counsel are directed to appear before the learned First Appellate Court on 5.3.2007 on which date the costs are to be paid. If costs are not paid on the said date, the appeal before the learned First Appellate Court shall be deemed to be dismissed.

(HEMANT GUPTA)
JUDGE

January 29, 2007
**mohinder*